

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JAMES AVERY CRAFTSMAN, INC.,

Plaintiff,

v.

Civil Action No. 5:13-cv-1110

SEARS, ROEBUCK AND CO., KMART
CORPORATION, COMBINE
INTERNATIONAL, INC., JEWELRY BEST
BUY LLC d/b/a VISHAL JEWELRY,
JEWELRYWEB.COM, INC., ITALIAN
CHARMS BRACELET, INC. d/b/a
JEWELRYADVISOR.COM, MJB
MARKETING, INC. d/b/a
MYJEWELRYBOX.COM, E GEMS, INC.
d/b/a GEMAFFAIR.COM, SUNNY
COMMERCE, LLC d/b/a 14k.co,
FINDINGKING.COM, LLC, H. CHANDRA
DIAMONDS d/b/a HAZRATI.COM, WEST
COAST JEWELRY, INC., ALLURE
JEWEL & GIFT a/k/a ABSOLUTE JEWEL
& GIFT, BIG SUR ELEGANCE, MMA
INTERNATIONAL, LLC, and MIDWEST
JEWELRY AND APPARELS

Defendants.

ORIGINAL COMPLAINT

This is an action for copyright infringement. Plaintiff James Avery Craftsman, Inc. files this Original Complaint seeking injunctive relief and damages from Sears, Roebuck and Co. (“Sears”), KMART Corporation (“K-Mart”) and their affiliated entities, vendors, sellers and/or suppliers named as defendants above (collectively “Defendants”).

Parties

1. James Avery Craftsman, Inc. (“James Avery” or “James Avery Craftsman”) is a Texas corporation with its principal place of business in Kerrville, Texas.

2. Defendant Sears is a company incorporated under the laws of the state of New York, with its principal place of business located at 3333 Beverly Rd. 82-1138, Hoffman Estates, IL 60179-0001. Sears operates the online retail store located at www.sears.com through which merchandise is advertised, marketed, displayed and sold. Sears engages in business and maintains regular places of business, including retail stores, throughout Texas, including in San Antonio, Texas. Sears has not designated a resident agent for service with the Texas Secretary of State. Accordingly, pursuant to Rule 4 of the Federal Rules of Civil Procedure, section 17.044 of the Texas Civil Practice and Remedies Code, and section 5.251 of the Texas Business Organizations Code, the Texas Secretary of State is designated as Sears’s agent for service of process in this action. The Texas Secretary of State Citations Unit may be served at P.O. Box 12079, Austin, Texas 78711-2079 by certified mail, return receipt requested. Pursuant to section 17.045(a) of the Civil Practice and Remedies Code, the Secretary of State shall forward citation and a copy of this Complaint to Sears, Roebuck and Co. at its home or home office located at 3333 Beverly Rd., Hoffman Estates Illinois, 60179.

3. Defendant K-Mart is a company incorporated under the laws of the state of Michigan, with its principal place of business located at 30600 Telegraph Rd., Suite 2345, Bingham Farms, MI 48025. K-Mart operates the online retail store located at www.kmart.com through which merchandise is advertised, marketed, displayed and sold. K-Mart engages in business through its online store throughout Texas, including in San Antonio, Texas, and maintains regular places of business, including retail stores, in certain areas of Texas. K-Mart

has not designated a resident agent for service with the Texas Secretary of State. Accordingly, pursuant to Rule 4 of the Federal Rules of Civil Procedure, section 17.044 of the Texas Civil Practice and Remedies Code, and section 5.251 of the Texas Business Organizations Code, the Texas Secretary of State is designated as K-Mart's agent for service of process in this action. The Texas Secretary of State Citations Unit may be served at P.O. Box 12079, Austin, Texas 78711-2079 by certified mail, return receipt requested. Pursuant to section 17.045(a) of the Civil Practice and Remedies Code, the Secretary of State shall forward citation and a copy of this Complaint to KMART Corporation at its home or home office located at 30600 Telegraph Rd., Suite 2345, Bingham Farms, MI 48025.

4. Defendant Combine International, Inc. ("Combine") is a company incorporated under the laws of the state of Michigan, with its principal place of business in Michigan. Combine produces, manufactures, sources, and/or sells inventory that is purposefully advertised, marketed, displayed and sold on www.sears.com throughout Texas, including in San Antonio, Texas. Combine has not designated a resident agent for service with the Texas Secretary of State. Accordingly, pursuant to Rule 4 of the Federal Rules of Civil Procedure, section 17.044 of the Texas Civil Practice and Remedies Code, and section 5.251 of the Texas Business Organizations Code, the Texas Secretary of State is designated as Combine's agent for service of process in this action. The Texas Secretary of State Citations Unit may be served at P.O. Box 12079, Austin, Texas 78711-2079 by certified mail, return receipt requested. Pursuant to section 17.045(a) of the Civil Practice and Remedies Code, the Secretary of State shall forward citation and a copy of this Complaint to Combine International, Inc. at its home or home office located at 354 Indusco Court, Troy, MI 48083.

5. Defendant Jewelry Best Buy LLC d/b/a Vishal Jewelry (“Vishal”) is a limited liability company organized under the laws of the state of New York, with its principal place of business in New York with a mailing address of P.O. BOX 230275, Hollis, NY 11423-0275. Vishal produces, manufactures, sources, and/or sells inventory that is purposefully advertised, marketed, displayed and sold on www.sears.com throughout Texas, including in San Antonio, Texas. Vishal has not designated a resident agent for service with the Texas Secretary of State. Accordingly, pursuant to Rule 4 of the Federal Rules of Civil Procedure, section 17.044 of the Texas Civil Practice and Remedies Code, and section 5.251 of the Texas Business Organizations Code, the Texas Secretary of State is designated as Vishal’s agent for service of process in this action. The Texas Secretary of State Citations Unit may be served at P.O. Box 12079, Austin, Texas 78711-2079 by certified mail, return receipt requested. Pursuant to section 17.045(a) of the Civil Practice and Remedies Code, the Secretary of State shall forward citation and a copy of this Complaint to Jewelry Best Buy LLC d/b/a Vishal Jewelry at its home or home office through its New York registered agent: United States Corporation Agents, Inc., 7014 13th Avenue, Suite 202, Brooklyn, NY, 11228.

6. Defendant JewelryWeb.com, Inc. (“JewelryWeb”) is a company incorporated under the laws of the state of New York, with its principal place of business in New York. JewelryWeb produces, manufactures, sources, and/or sells inventory that is purposefully advertised, marketed, displayed and sold on www.sears.com throughout Texas, including in San Antonio, Texas. JewelryWeb has not designated a resident agent for service with the Texas Secretary of State. Accordingly, pursuant to Rule 4 of the Federal Rules of Civil Procedure, section 17.044 of the Texas Civil Practice and Remedies Code, and section 5.251 of the Texas Business Organizations Code, the Texas Secretary of State is designated as JewelryWeb’s agent

for service of process in this action. The Texas Secretary of State Citations Unit may be served at P.O. Box 12079, Austin, Texas 78711-2079 by certified mail, return receipt requested. Pursuant to section 17.045(a) of the Civil Practice and Remedies Code, the Secretary of State shall forward citation and a copy of this Complaint to JewelryWeb.com, Inc. at its home or home office located at 98 Cutter Mill Road 4645, Great Neck, NY, 11021-3006.

7. Defendant Italian Charms Bracelet, Inc. d/b/a JewelryAdvisor.com (“JewelryAdvisor”) is a company incorporated under the laws of the state of Pennsylvania, with its principal place of business in Pennsylvania. JewelryAdvisor produces, manufactures, sources, and/or sells inventory that is purposefully advertised, marketed, displayed and sold on www.sears.com throughout Texas, including in San Antonio, Texas. JewelryAdvisor has not designated a resident agent for service with the Texas Secretary of State. Accordingly, pursuant to Rule 4 of the Federal Rules of Civil Procedure, section 17.044 of the Texas Civil Practice and Remedies Code, and section 5.251 of the Texas Business Organizations Code, the Texas Secretary of State is designated as JewelryAdvisor’s agent for service of process in this action. The Texas Secretary of State Citations Unit may be served at P.O. Box 12079, Austin, Texas 78711-2079 by certified mail, return receipt requested. Pursuant to section 17.045(a) of the Civil Practice and Remedies Code, the Secretary of State shall forward citation and a copy of this Complaint to Italian Charms Bracelet, Inc. d/b/a JewelryAdvisor.com at its home or home office located at 11021 Bustleton Avenue, Philadelphia, PA 19116.

8. Defendant MJB Marketing, Inc. d/b/a MyJewelryBox.com (“MJB”) is a company incorporated under the laws of the province of Quebec, Commonwealth of Canada with its principal place of business in Montreal, Quebec. MJB produces, manufactures, sources, and/or

sells inventory that is purposefully advertised, marketed, displayed and sold on www.sears.com throughout Texas, including in San Antonio, Texas. MJB has not designated a resident agent for service with the Texas Secretary of State. Accordingly, pursuant to Rule 4 of the Federal Rules of Civil Procedure, section 17.044 of the Texas Civil Practice and Remedies Code, and section 5.251 of the Texas Business Organizations Code, the Texas Secretary of State is designated as MJB's agent for service of process in this action. The Texas Secretary of State Citations Unit may be served at P.O. Box 12079, Austin, Texas 78711-2079 by certified mail, return receipt requested. Pursuant to section 17.045(a) of the Civil Practice and Remedies Code, the Secretary of State shall forward citation and a copy of this Complaint to MJB Marketing, Inc. d/b/a MyJewelryBox.com at its United States home or home office located at 12 Nepco Way, Plattsburgh, NY 12903.

9. Defendant E Gems, Inc. d/b/a GemAffair.com ("GemAffair") is a company incorporated under the laws of the state of Florida with its principal place of business in Florida. GemAffair produces, manufactures, sources, and/or sells inventory that is purposefully advertised, marketed, displayed and sold on www.sears.com throughout Texas, including in San Antonio, Texas. GemAffair has not designated a resident agent for service with the Texas Secretary of State. Accordingly, pursuant to Rule 4 of the Federal Rules of Civil Procedure, section 17.044 of the Texas Civil Practice and Remedies Code, and section 5.251 of the Texas Business Organizations Code, the Texas Secretary of State is designated as GemAffair's agent for service of process in this action. The Texas Secretary of State Citations Unit may be served at P.O. Box 12079, Austin, Texas 78711-2079 by certified mail, return receipt requested. Pursuant to section 17.045(a) of the Civil Practice and Remedies Code, the Secretary of State shall

forward citation and a copy of this Complaint to E Gems, Inc. d/b/a GemAffair.com at its home or home office located at 161 6th St. SW, Largo, FL 33770.

10. Defendant Sunny Commerce, LLC d/b/a 14k.co (“14k”) is a limited liability company incorporated under the laws of the state of Texas with its principal place of business in Houston, Texas. 14k produces, manufactures, sources, and/or sells inventory that is purposefully advertised, marketed, displayed and sold on www.sears.com throughout Texas, including in San Antonio, Texas. 14k has designated a resident agent for service with the Texas Secretary of State: The Traub Law Office, P.C., 7719 Wood Hollow Dr., Suite 200, Austin, TX 78731.

11. Defendant FindingKing.com LLC (“FindingKing”) is a limited liability company organized under the laws of the state of Arizona with its principal place of business in Mesa, Arizona. FindingKing produces, manufactures, sources, and/or sells inventory that is purposefully advertised, marketed, displayed and sold on www.sears.com throughout Texas, including in San Antonio, Texas. FindingKing has not designated a resident agent for service with the Texas Secretary of State. Accordingly, pursuant to Rule 4 of the Federal Rules of Civil Procedure, section 17.044 of the Texas Civil Practice and Remedies Code, and section 5.251 of the Texas Business Organizations Code, the Texas Secretary of State is designated as FindingKing’s agent for service of process in this action. The Texas Secretary of State Citations Unit may be served at P.O. Box 12079, Austin, Texas 78711-2079 by certified mail, return receipt requested. Pursuant to section 17.045(a) of the Civil Practice and Remedies Code, the Secretary of State shall forward citation and a copy of this Complaint to FindingKing.com LLC at its home or home office located at 3007 N. Norfolk, Mesa, AZ 85215.

12. Defendant H. Chandra Diamonds d/b/a Hazrati.com (“Hazrati”) is a limited liability company organized under the laws of the state of New York with its principal place of business in New York. Hazrati produces, manufactures, sources, and/or sells inventory that is purposefully advertised, marketed, displayed and sold on www.sears.com throughout Texas, including in San Antonio, Texas. Hazrati has not designated a resident agent for service with the Texas Secretary of State. Accordingly, pursuant to Rule 4 of the Federal Rules of Civil Procedure, section 17.044 of the Texas Civil Practice and Remedies Code, and section 5.251 of the Texas Business Organizations Code, the Texas Secretary of State is designated as Hazrati’s agent for service of process in this action. The Texas Secretary of State Citations Unit may be served at P.O. Box 12079, Austin, Texas 78711-2079 by certified mail, return receipt requested. Pursuant to section 17.045(a) of the Civil Practice and Remedies Code, the Secretary of State shall forward citation and a copy of this Complaint to H. Chandra Diamonds d/b/a Hazrati.com at its home or home office located at 37 W. 47th Street, Suite 46, New York, NY 10036.

13. Defendant West Coast Jewelry, Inc. (“WCJ”) is a company incorporated under the laws of the state of California with its principal place of business in Culver City, California. WCJ produces, manufactures, sources, and/or sells inventory that is purposefully advertised, marketed, displayed and sold on www.sears.com throughout Texas, including in San Antonio, Texas. WCJ has not designated a resident agent for service with the Texas Secretary of State. Accordingly, pursuant to Rule 4 of the Federal Rules of Civil Procedure, section 17.044 of the Texas Civil Practice and Remedies Code, and section 5.251 of the Texas Business Organizations Code, the Texas Secretary of State is designated as WCJ’s agent for service of process in this action. The Texas Secretary of State Citations Unit may be served at P.O. Box 12079, Austin, Texas 78711-2079 by certified mail, return receipt requested. Pursuant to section 17.045(a) of

the Civil Practice and Remedies Code, the Secretary of State shall forward citation and a copy of this Complaint to West Coast Jewelry, Inc. at its home or home office located at 600 Corporate Pointe, Suite 150, Culver City, California 90230.

14. Upon information and belief, Defendant Allure Jewel & Gift a/k/a Absolute Jewel & Gift (“Allure”) is a sole proprietorship with a principal place of business in New Jersey. Allure produces, manufactures, sources, and/or sells inventory that is purposefully advertised, marketed, displayed and sold on www.sears.com throughout Texas, including in San Antonio, Texas. Allure has not designated a resident agent for service with the Texas Secretary of State. Accordingly, pursuant to Rule 4 of the Federal Rules of Civil Procedure, section 17.044 of the Texas Civil Practice and Remedies Code, and section 5.251 of the Texas Business Organizations Code, the Texas Secretary of State is designated as Allure’s agent for service of process in this action. The Texas Secretary of State Citations Unit may be served at P.O. Box 12079, Austin, Texas 78711-2079 by certified mail, return receipt requested. Pursuant to section 17.045(a) of the Civil Practice and Remedies Code, the Secretary of State shall forward citation and a copy of this Complaint to Allure Jewel & Gift at its home or home office located at 18 Anna Lane, Edison, NJ 08820.

15. Upon information and belief, Defendant Big Sur Elegance is a sole proprietorship with a principal place of business in Tennessee. Big Sur Elegance produces, manufactures, sources, and/or sells inventory that is purposefully advertised, marketed, displayed and sold on www.sears.com throughout Texas, including in San Antonio, Texas. Big Sur Elegance has not designated a resident agent for service with the Texas Secretary of State. Accordingly, pursuant to Rule 4 of the Federal Rules of Civil Procedure, section 17.044 of the Texas Civil Practice and

Remedies Code, and section 5.251 of the Texas Business Organizations Code, the Texas Secretary of State is designated as Big Sur Elegance's agent for service of process in this action. The Texas Secretary of State Citations Unit may be served at P.O. Box 12079, Austin, Texas 78711-2079 by certified mail, return receipt requested. Pursuant to section 17.045(a) of the Civil Practice and Remedies Code, the Secretary of State shall forward citation and a copy of this Complaint to Big Sur Elegance at its home or home office with a mailing address of PO BOX 10673 Murfreesboro, TN 37129.

16. Defendant MMA International, LLC ("MMA") is a Limited Liability Company with its principal place of business in Austin, Texas. MMA produces, manufactures, sources, and/or sells inventory that is purposefully advertised, marketed, displayed and sold on www.sears.com throughout Texas, including in San Antonio, Texas. MMA has designated the following agent for service with the Texas Secretary of State: Allen H. Mason, 30 Tall Oaks Trail, Austin, TX 78737.

17. Upon information and belief, Defendant Midwest Jewelry and Apparels ("Midwest") is a sole proprietorship with a principal place of business in Kansas. Midwest produces, manufactures, sources, and/or sells inventory that is purposefully advertised, marketed, displayed and sold on www.sears.com throughout Texas, including in San Antonio, Texas. Midwest has not designated a resident agent for service with the Texas Secretary of State. Accordingly, pursuant to Rule 4 of the Federal Rules of Civil Procedure, section 17.044 of the Texas Civil Practice and Remedies Code, and section 5.251 of the Texas Business Organizations Code, the Texas Secretary of State is designated as Midwest's agent for service of process in this action. The Texas Secretary of State Citations Unit may be served at P.O. Box 12079, Austin,

Texas 78711-2079 by certified mail, return receipt requested. Pursuant to section 17.045(a) of the Civil Practice and Remedies Code, the Secretary of State shall forward citation and a copy of this Complaint to Midwest Jewelry and Apparels at its home or home office with a mailing address of 11830 Quivira Rd., Overland Park, KS 66210.

Jurisdiction and Venue

18. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because the matter in question arises under the laws of the United States, namely the Copyright Act (17 U.S.C. § 101 *et seq.*) and 28 U.S.C. § 1338(a) because the matter in question concerns copyright claims arising under an Act of Congress, namely the Copyright Act (17 U.S.C. § 101 *et seq.*).

19. Venue of this action in this Court and district is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to James Avery Craftsman's claim occurred in this district and defendants have displayed, sold and distributed the infringing items to the public in this district through the retail websites, www.sears.com, and www.kmart.com, among others websites, and have sold jewelry forming the basis for this suit to customers in within this district.

Factual Background

20. James Avery Craftsman, a Texas corporation, is and for many years has been involved in the business of creating, designing, manufacturing, marketing and selling original copyrightable designs which are used in sculptures such as jewelry.

21. The designs created by James Avery Craftsman, by and through its employees, have been produced through the expenditure of considerable labor, skill and judgment on the part

of James Avery Craftsman, and such designs contain original design and are copyrightable subject matter under the laws of the United States.

A. James Avery Craftsman's Copyrighted Designs

22. James Avery Craftsman has complied in all respects with Title 17 of the United States Code, and all other laws governing copyrights, and thereby has secured the exclusive rights and privileges in and to the copyrights of numerous designs and has received from the Register of Copyrights of the United States Copyright Office numerous Certificates of Copyright Registrations, covering its original designs. In particular, James Avery Craftsman has obtained Copyright Registrations for the following designs:

Name	Certificate of Copyright Registration No.	Effective Date of Registration
Serenity Cross (C-380)	VA 48-108	4-10-1980
Rosebud Cross (C-687)	VA 177-855	1-22-1985
Open Dove (C-36)	VA 46-923	03-24-1980
Dragonfly Pendant (EH-1597)	VA 1-667-382	04-24-2009
Heart Knot Ear Post/Ring (EP-1354/R-1251)	VA 1-033-774	08-16-2000

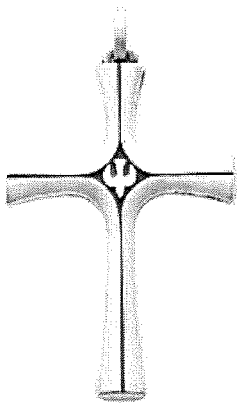
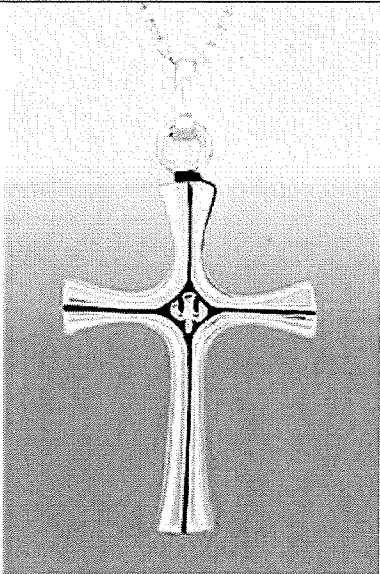
Records of such Copyright Registrations are publicly available through the United States Copyright Office, whose public records are incorporated herein (collectively referred to as the "Copyrighted Designs"). The Certificates of Copyright Registration for the Copyrighted Designs are in Plaintiff's possession, are valid and enforceable, and all rights, title and interest in and to them belong solely to James Avery Craftsman.

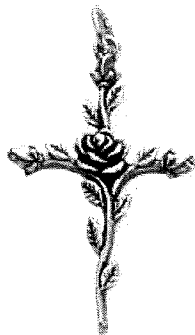
23. James Avery Craftsman has sold and published jewelry incorporating the copyright-protected designs in accordance with § 401 of Title 17 of the United States Code and the federal laws governing copyrights.

B. Defendants' Infringement of the Copyrighted Designs

24. Upon information and belief, Defendants have infringed the Copyrighted Designs by manufacturing, publishing, copying, distributing, advertising, selling and/or placing on the market jewelry which incorporates reproductions of the Copyrighted Designs (collectively the "Infringing Jewelry"). Defendants infringed the Copyrighted Designs as described through use of the retail websites www.sears.com, www.kmart.com, and through their respective retail stores.

25. Below is an accurate side by side comparison of James Avery Craftsman's Copyrighted Designs and the Infringing Jewelry offered for sale by defendants:

James Avery Craftsman Copyrighted Designs	Infringing Jewelry Offered on Sears.com and/or Kmart.com
 <p data-bbox="284 1759 699 1822">James Avery Serenity Cross (C-380) Copyright Registration No. VA 48-108</p>	 <p data-bbox="821 1749 1382 1871">Item No. 04462729000 (Model No. R370197-SS) Vendors: Sears (direct retail, in stores and online) K-Mart (direct retail, in stores and online) Combine International, Inc. (wholesale)</p>



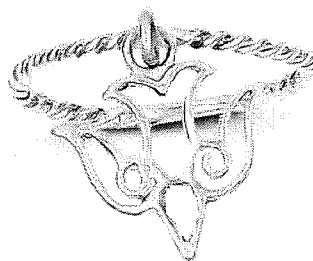
James Avery Rosebud Cross (C-687)
Copyright Registration No. VA 177-855



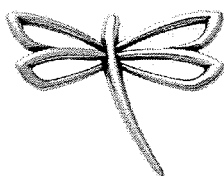
Sterling Silver Rose Cross Pendant
Item #026V006914016000 Retailer: K-Mart (direct)
Item # SPM7956990302 Vendor: Vishal
Item # SPM7342685904 Vendor: 14k
Item # SPM7621045611 Vendor: JewelryAdvisor
Item # SPM1537395014 Vendor: MJB
Item # SPM8329199111 Vendor: GemAffair
Item # SPM1976627914 Vendor: GemAffair
Item # SPM5554763002 Vendor: FindingKing
Item # SPM6628822901 Vendor: West Coast (WCJ)
Item # SPM2450550302 Vendor: Allure



James Avery Open Dove (C-36)
Copyright Registration No. VA 46-923



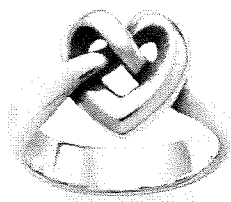
Dove Dangle Twisted Band Child's Ring
Item # SPM7962621902 Vendor: Vishal
Item # SPM7776208611 Vendor: JewelryAdvisor
Item # SPM7754857611 Vendor: JewelryWeb



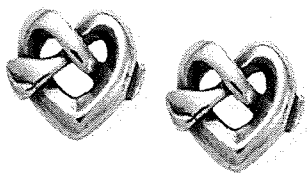
James Avery Dragonfly Pendant (EH-1597)
Copyright Registration No. VA 1-667-382



Polished Dragonfly Pendant
Item # SPM7957164502 Vendor: Vishal
Item # SPM7724866111 Vendor: JewelryAdvisor
Item # SPM7342997304 Vendor: 14k
Item # SPM668313514 Vendor: Hazrati
Item # SPM7767177202 Vendor: Big Sur Elegance

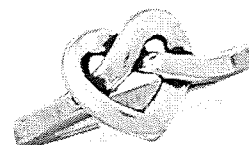


James Avery Heart Knot Ring (R-1251)

James Avery Heart Knot Ear Post (EP-1354)
Copyright Registration No. VA 1-033-774

Knotted Heart Ring

Item # SPM7089083203	Vendor: MMA
Item # SPM6625505701	Vendor: West Coast (WCJ)
Item # 000000000000000012730000000000MMA-82418P	Vendor: West Coast (WCJ)
Item # SPM7965991802	Vendor: Vishal
Item # SPM7965992102	Vendor: Vishal
Item # SPM7965991902	Vendor: Vishal
Item # SPM7965992202	Vendor: Vishal
Item # SPM7965991702	Vendor: Vishal
Item # SPM7965992002	Vendor: Vishal
Item # SPM7965992402	Vendor: Vishal
Item # SPM7965992302	Vendor: Vishal
Item # SPM6018085801	Vendor: JewelryWeb
Item # SPM6018085901	Vendor: JewelryWeb
Item # SPM6018085601	Vendor: JewelryWeb
Item # SPM6018085501	Vendor: JewelryWeb
Item # SPM6018085701	Vendor: JewelryWeb



Sterling Silver Knotted Heart Ring

Item #SPM6018085501	Vendor: JewelryWeb
Item #SPM716431214	Vendor: Midwest Jewelry

26. Upon information and belief, additional infringing pieces with item numbers not listed above may currently or previously have been offered for sale on www.sears.com and/or www.kmart.com, or in the Defendants' respective retail stores.

C. Defendants' Long Delays in Removing Infringing Items

27. On or about July 9, 2013, James Avery Craftsman notified Sears that some of the Infringing Jewelry (along with some other pieces not included in this complaint) were being offered on its retail website www.sears.com, and the fact that such jewelry infringed the copyrights of James Avery Craftsman. See **Exhibit A** (July 9, 2013 letter from J. Daniel Harkins, counsel for James Avery Craftsman, to Sears Holding Company) which is incorporated by reference herein. In that correspondence, James Avery Craftsman demanded, *inter alia*, that Sears immediately cease selling the Infringing Jewelry and identify the suppliers of such merchandise.

28. Sears agreed to remove the infringing Serenity Cross and forwarded the correspondence to Defendant Combine, the supplier of the Infringing Jewelry.

29. Notwithstanding Sears' agreement to remove certain Infringing Jewelry, Sears continued to promote and sell certain Infringing Jewelry. This infringement continued for months after initial demand, and required multiple demands from Plaintiff's counsel to remove such items. Sears made representations that items would be removed from the website on several different dates, only to have the items remain available for long periods thereafter.

30. Certain Infringing Jewelry remains available for sale on www.sears.com and www.kmart.com at the time of the filing of this complaint.

31. On information and belief, each Defendant has profited through the intentional infringement of Plaintiff's copyrights.

Count I

Copyright Infringement, 17 U.S.C. § 501

32. James Avery Craftsman incorporates by reference paragraphs 1 through 31 as if set forth fully herein.

33. The Copyrighted Designs are original works of authorship of James Avery Craftsman. James Avery Craftsman is the lawful owner and holder of Federal Copyright Registrations identified in paragraph 19 above with respect to these original designs.

34. Defendants' copying of James Avery Craftsman's Copyrighted Designs was unauthorized, intentional and malicious. Defendants' production, distribution, sale and display of the Infringing Jewelry infringed James Avery Craftsman's copyrights.

35. Defendants' willful and unauthorized copying, production, distribution, sale and display of the Infringing Jewelry have resulted in wrongful profits to Defendants, the full extent of which is as yet undetermined, and losses to James Avery Craftsman, the full extent of which is as yet undetermined.

36. By reason of Defendants' willful infringement of the copyrighted designs, Defendants have also diminished the value of James Avery Craftsman's goodwill and reputation resulting in monetary damage and irreparable injury to James Avery Craftsman.

37. By reason of Defendants' willful infringement of the copyrighted designs, Defendants have irreparably injured James Avery Craftsman's right in its designs and unless enjoined by this Court, will continue to do so.

Jury Demand

38. James Avery Craftsman hereby requests a trial by jury.

Prayer

WHEREFORE, Plaintiff James Avery Craftsman, Inc. prays that judgment be entered in its favor and against Defendants, for copyright infringement, and that the Court order as follows:

- a. That Defendants, and all agents or persons and entities in active concert or participation with them, be permanently enjoined from producing, utilizing, copying, reproducing, distributing, selling or displaying materials that infringe any of James Avery Craftsman's copyrighted designs;
- b. That James Avery Craftsman be awarded its actual damages sustained as a result of Defendants' copyright infringement;
- c. That James Avery Craftsman be awarded statutory damages against each Defendant pursuant to 17 U.S.C. § 504(c)(1) in the amount of \$30,000 per infringement, unless the Court finds it proper to increase the amount of statutory damages up to a sum of \$150,000 per infringement pursuant to 17 U.S.C. § 504(c)(2), in which case James Avery Craftsman prays for the higher award;
- d. That Defendants be required to account for and to disgorge all profits obtained as a result of Defendants' copyright infringement;
- e. That James Avery Craftsman be awarded the value of the damage to its goodwill and reputation sustained as a result of Defendants' copyright infringement;
- f. That James Avery Craftsman be awarded its costs and attorneys' fees incurred in bringing this action;
- g. That Defendants be ordered to pay James Avery Craftsman prejudgment and post-judgment interest; and
- h. That James Avery Craftsman be granted such other and further legal and equitable relief against Defendants as the Court deems appropriate.

Dated: December 9, 2013

Respectfully submitted,

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By: /s/ J. Daniel Harkins
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State Bar No. 09008990
Ryan V. Cox
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